

**Editor's note: Reconsideration denied by Order dated June 27, 1988**

UNION OIL CO. OF CALIFORNIA

IBLA 86-1121

Decided September 17, 1987

Appeal from a decision of the Oregon State Office, Bureau of Land Management, offering noncompetitive geothermal lease with stipulations. OR 39699.

Affirmed.

1. Geothermal Leases: Environmental Protection: Generally -- National Environmental Policy Act of 1969: Environmental Statements

When BLM has adopted a staged leasing program and notifies a potential geothermal lessee that all postlease plans for exploration and development are subject to site-specific environmental review, and that development might be limited or denied if such review discloses that unacceptable impacts on other land uses or resources would result, it is not necessary to prepare an environmental impact statement prior to leasing.

APPEARANCES: Chiye R. Wenkam, Esq., Los Angeles, California, for appellant; Donald P. Lawton, Esq., Associate Regional Solicitor, Pacific Northwest Region, Portland, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Union Oil Company of California (Union) appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated April 10, 1986, 1/ offering to lease, with stipulations, noncompetitive geothermal lease [2] OR 39699 for lands in the Deschutes National Forest, Oregon. The stipulations include by reference Forest Service stipulations addressing wildlife and habitat protection, water restrictions, fire control, cultural resources, and archaeological concerns and requiring that a plan of operations be submitted. A conditional no surface occupancy stipulation was also included. This stipulation stated:

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1/ In another decision, also dated Apr. 10, 1986, BLM rejected appellant's offer in part as to lands not involved in this appeal.

The Bureau of Land Management has reviewed existing information and planning documents and except as noted in attached special stipulations, knows of no reason why normal development, subject to the controls of applicable laws and regulations, and the lease terms and conditions, cannot proceed on the leased lands. However, specific activities could not be considered prior to lease issuance since the nature and extent of the geothermal resource were not known and specific operations have not been proposed. The lessee is hereby made aware that, consistent with 43 CFR 3262.4, all post lease operations will be subject to appropriate environmental review and may be limited or denied, but only if unmitigatable and unacceptable impacts on other land uses or resources would result.

Appellant filed the offer to lease with BLM on December 23, 1985, on standard Departmental Form 3200-24. On November 17, 1985, BLM conducted a categorical exclusion review. In this review, BLM noted that the Department of the Interior had prepared a programmatic environmental impact statement (EIS) addressing geothermal leasing and development (1973) and the Forest Service had prepared a Geothermal Leasing Environmental Assessment Report (EA) (1982). As a result of the review, BLM determined that geothermal leasing in the Deschutes National Forest was categorically excluded from further environmental analysis except for site-specific analysis.

Appellant objects to the BLM stipulation in its statement of reasons for appeal. It argues that delaying environmental analysis until a plan of operations is complete would waste time and money. It contends the expenditures necessary to prepare a detailed plan and commence leasing activity cannot be justified unless there is an assurance of project approval that presupposes adequate environmental analysis. Appellant urges that the analysis contained in a Deschutes National Forest EIS, issued in draft in January 1986, would be sufficient, if extended to this project. Appellant insists that enough data is now available to properly evaluate the impacts of each stage of possible geothermal development, and requests that all necessary environmental analysis be performed at this stage so that geothermal lease OR 39699 may be offered without the BLM stipulation.

Alternatively, appellant requests a hearing on issues of fact. Appellant seeks to establish that sufficient information now exists for the proper evaluation of the environmental impacts of geothermal leasing in the area in question. Appellant continues to contend that no facts justify separate environmental analysis at each stage of a lease operation.

BLM responds that it has neither the money nor manpower necessary to produce the EIS appellant requests, and that administrative convenience dictates the approach adopted by BLM. It also argues that the Interior Board of Land Appeals is without authority to direct the Forest Service to prepare an EIS. BLM adds that phased leasing and analysis would comport with the Board's decisions in Sierra Club, Oregon Chapter, 87 IBLA 1 (1985) and Sierra Club, Mono Lake Committee, 84 IBLA 75 (1984), and that analysis at each stage is more practical.

[1] The Board considered the language of the disputed BLM stipulation in Sierra Club, Mono Lake Committee, supra. <sup>2/</sup> In that case the Board remanded the matter to BLM for clarification of the BLM position on staged leasing, but noted that a staged leasing stipulation is desirable to ensure that a lessee understands and accepts the conditional development restriction. However, the Board noted that a staged leasing stipulation was not legally required in that case because the conditional development restriction had been included in the notice of sale. Thus, when it submitted its bid and lease application, the lessee had consented to the concept, as a part of the terms of the sale. 43 CFR 3220.3; see Emery Energy, Inc., 64 IBLA 285 (1982). When BLM has properly provided for conditional development of a lease by specifying that development would be limited or denied if site-specific environmental review reveals unacceptable environmental impacts would result from continued activity, the preparation of an EIS prior to lease issuance is unnecessary.

In addition, appellant was placed on notice of the possibility of further studies, modification of operations, and even cessation of operations due to "substantial unanticipated environmental effects." Lease offer form 3200-24, Sec. 6. Thus, as in Sierra Club, Mono Lake Committee, supra, preparation of an EIS prior to lease issuance is unnecessary. <sup>3/</sup>

BLM's primary argument in this case is one of administrative inconvenience. BLM appears to prefer a staged analysis to a "tiered" series. See 40 CFR 1502.20, 1508.28. In its answer, BLM implies it would go ahead with a complete environmental analysis at this stage, if it had the necessary money and staff. As the lead agency BLM would normally be required to use its own funds when preparing an EIS. 40 CFR 1501.6(b)(5). However, the Federal Land Policy and Management Act, 43 U.S.C. § 1734 (1982), allows the Secretary of the Interior to impose reasonable charges for the preparation of applications and other documents relating to the public lands. This provision allows the Secretary to recover reasonable EIS preparation costs from an applicant. Nevada Power Co. v. Watt, 711 F.2d 913 (10th Cir. 1983). In the case now before us there is no evidence that appellant has indicated a willingness to bear this burden, even though it argues that it is in its longterm interest to do so. <sup>4/</sup>

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<sup>2/</sup> The stipulation in that case referred to 30 CFR 270.12, a previous version of regulation 43 CFR 3262.4.

<sup>3/</sup> We do note that a more definitive statement of the possible effect of BLM's restrictions may be advisable.

<sup>4/</sup> We doubt that this approach would result in any greater assurance, as it would require a speculative study of the nature and extent of the field, the facilities which might be constructed and their impact on the environment, thus locking appellant into a course of action which may not be deemed appropriate upon subsequent development of the field. If an EIS were prepared at this time, an additional EA, and possibly an additional EIS, may be required if, after development of additional facts, it is determined that the facilities would differ from those determined to be acceptable at the time of the

Because this appeal does not raise a substantial factual dispute, the motion for hearing is denied. See Woods Petroleum Co., 86 IBLA 46 (1985).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Oregon State Office is affirmed.

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R. W. Mullen  
Administrative Judge

We concur:

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Anita Vogt  
Administrative Judge  
Alternate Member

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C. Randall Grant, Jr.  
Administrative Judge

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fn. 4 (continued)

issuance of the lease. On the other hand, a staged leasing program would allow the application of site-specific mitigation measures which would render an unacceptable impact acceptable. Further, the cost in money and manpower for study of the environmental impacts resultant from the construction and operation of generating facilities would not be necessary if, after development of existing reserves, those facilities could not be economically justified.